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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,928	10/30/2003	Juan C. Villar	VILLAR-3R	9743
7590	12/07/2005		EXAMINER	
Juan C Villar 9365 Aegean Drive Boca Raton, FL 33496			GRAVINI, STEPHEN MICHAEL	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/697,928	VILLAR, JUAN C.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stephen Gravini	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 251***

Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Director shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

The Director may issue several reissued patents for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued patents.

The provisions of this title relating to applications for patent shall be applicable to applications for reissue of a patent, except that application for reissue may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent.

No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent.

Claims 1-28 are rejected under 35 USC 251 because the patent term has expired due to non-payment of the maintenance fee due in April 2005. As of the date of this Office action no payment has been received by the Office.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9-10, 19, 21, 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Stephenson (US 2,639,958). Since the present application is a reissue application based on applicants declaration of adding new claims to remove “means” language which may be deemed limiting by the courts, examiner has interpreted that as an intention to invoke the sixth paragraph of section 112 of the patent statute.

Examination of the present application will be based on the current Office practice of means plus function language discussed in the Manual for Patent Examining Procedure section 2181. Stephenson is considered to disclose the claimed invention comprising:

a container **6** or **7** having a height, width, and depth;

means **9** for controlling the humidity within said container;

said container having one or more transparent surfaces **30** permitting viewing of the interior thereof;

said container having means **3** or **5** for lateral access to the contents therein; and means again, **3** or **5**, for positioning a plurality of cigars in said container in a substantially vertical manner and position so as to permit effective viewing through said one or more transparent surfaces wherein the disclosed shelves are considered to anticipate the claimed lateral access and means because both the claimed invention

and prior art reference Stephenson both provide a side to side or lateral access level contents enclosed;

wherein the depth and height of said container is substantially smaller than said width as discussed in columns 1 and 2 wherein the disclosed length is considered to anticipate the claimed depth to width ratio because both the claimed invention and prior art reference Stephenson have rows of cigars that are longitudinally displayed rather than depth wise display; or alternatively:

a container **6** or **7** having a height, width, and depth;

an environmental control unit **9** within said container;

said container having one or more transparent surfaces **30** permitting viewing of the interior thereof;

a lateral access **3** or **5** to the contents therein; and

wherein the depth and height of said container is substantially smaller than said width as discussed in columns 1 and 2 wherein the disclosed length is considered to anticipate the claimed depth to width ratio because both the claimed invention and prior art reference Stephenson have rows of cigars that are longitudinally displayed rather than depth wise display. Stephenson is also considered to disclose the claimed one or more small open containers placed within said container and means for positioning said small open containers such that the openings thereof are in a substantially vertical position and effectively viewed through said transparent surfaces so as to permit viewing of the contents thereof wherein said small open containers are

adapted to holding tobacco products at column 2 lines 40-55 and wherein the environmental control unit comprises a humidifier comprising a water reservoir 15.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson in view of Kasuli (US 5,741,444). Stephenson is considered to disclose the claimed invention, as rejected above, except for the claimed container adaptation to placement upon a barshelf. Kasuli, another humidor, is considered to disclose a container adaptation at column 3 line 59. It would have been obvious to one skilled in the art to combine the teachings of Stephenson with the container adaptation to placement upon a barshelf, suggested by Kasuli, for the purpose of allowing a humidor to be adapted for shelf placement or any other type of wall mounting. Again Stephenson is considered to disclose the claimed invention, as rejected above, except

for the claimed means for controlling the temperature therein. Kasuli, another humidor, is considered to disclose means for controlling the temperature therein at column 4 lines 17-31. It would have been obvious to one skilled in the art to combine the teachings of Stephenson with the means for controlling the temperature, suggested by Kasuli, for the purpose of regulating a humidor moisture level based on regulating the temperature. Furthermore, Stephenson in view of Kasuli is considered to disclose the claimed invention except for the claimed inch height restriction or tilt angle. It would have been an obvious matter of design choice to provide an inch height restriction or tilt angle, since the prior art teachings would perform the claimed invention regardless of the height restriction or tilt angle.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson in view of Kraus et al. (US 5,842,579). Stephenson is considered to disclose the claimed invention, as rejected above, except for the claimed control panel section having controls accessible from outside said container for controlling the environment within said container. Kraus, another humidor, is considered to disclose a control panel section having controls accessible from outside said container for controlling the environment within said container at column 4 lines 17-31. It would have been obvious to one skilled in the art to combine the teachings of Stephenson with the a control panel section having controls accessible from outside said container for controlling the environment within said container, suggested by Kraus, for the purpose of allowing a user to have outside controls for environmental controls within the structure.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson in view of Admunsen, Jr. (US 2,565,795). Stephenson is considered to disclose the claimed invention, as rejected above, except for the claimed lights for illuminating container contents. Admunsen, another humidor, is considered to disclose lights for illuminating container contents at column 4 lines 3-12. It would have been obvious to one skilled in the art to combine the teachings of Stephenson with the lights for illuminating container contents, suggested by Admunsen, for the purpose of allowing a user to visually view container contents with greater clarity.

Claims 11, 13, 17-18, 20, 23, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson in view of Stauffer (US 5,848,534). Stephenson is considered to disclose the claimed invention, as rejected above, except for either the claimed means for mounting said humidor upon a wall such that a bottom surface of said container is readily accessible to surrounding air or wherein said humidor is adapted to mount upon a wall such that a bottom surface of said container is readily accessible to surrounding air. Stauffer, another humidor, is considered to disclose either means for mounting said humidor upon a wall such that a bottom surface of said container is readily accessible to surrounding air or wherein said humidor is adapted to mount upon a wall such that a bottom surface of said container is readily accessible to surrounding air at column 7 lines 42-52. It would have been obvious to one skilled in the art to combine the teachings of Stephenson in view of Stauffer with the either means for mounting said humidor upon a wall such that a bottom surface of said container is readily accessible to surrounding air or wherein said humidor is adapted to mount upon

a wall such that a bottom surface of said container is readily accessible to surrounding air, suggested by Stauffer, for the purpose of allowing a humidor to be placed in various places including a wall.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson in view of Stauffer in further view of Barriero, Jr. (US 5,970,987). Stephenson is considered to disclose the claimed invention, as rejected above, except for either the claimed bottom surface having one or more vents therethrough permitting air to enter a container. Barriero, another humidor, is considered to disclose a bottom surface having one or more vents therethrough permitting air to enter a container at column 7 lines 42-52. It would have been obvious to one skilled in the art to combine the teachings of Stephenson in view of Stauffer with the bottom surface having one or more vents therethrough permitting air to enter a container, suggested by Barriero, for the purpose of allowing greater circulation of an environmentally controlled atmosphere necessary in a humidor.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson in view of Stauffer in further view of Barriero, Jr. (US 5,970,987). Stephenson in view of Stauffer is considered to disclose the claimed invention, as rejected above, except for either the claimed bottom surface having one or more vents therethrough permitting air to enter a container. Barriero, another humidor, is considered to disclose a bottom surface having one or more vents therethrough permitting air to enter a container at column 7 lines 42-52. It would have been obvious to one skilled in the art to combine the teachings of Stephenson in view of Stauffer with

the bottom surface having one or more vents therethrough permitting air to enter a container, suggested by Barriero, for the purpose of allowing greater circulation of an environmentally controlled atmosphere necessary in a humidor.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson in view of Stauffer in further view of Kraus et al. (US 5,842,579). Stephenson in view of Stauffer is considered to disclose the claimed invention, as rejected above, except for the claimed control panel section having controls accessible from outside said container for controlling the environment within said container. Kraus, another humidor, is considered to disclose a control panel section having controls accessible from outside said container for controlling the environment within said container at column 4 lines 17-31. It would have been obvious to one skilled in the art to combine the teachings of Stephenson in view of Stauffer with the a control panel section having controls accessible from outside said container for controlling the environment within said container, suggested by Kraus, for the purpose of allowing a user to have outside controls for environmental controls within the structure.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson in view of Stauffer in further view of Admunsen, Jr. (US 2,565,795). Stephenson in view of Stauffer is considered to disclose the claimed invention, as rejected above, except for the claimed lights for illuminating container contents. Admunsen, another humidor, is considered to disclose lights for illuminating container contents at column 4 lines 3-12. It would have been obvious to one skilled in the art to combine the teachings of Stephenson in view of Stauffer with the lights for illuminating

container contents, suggested by Admunsen, for the purpose of allowing a user to visually view container contents with greater clarity.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson in view of Morrison (US 5,012,763). Stephenson is considered to disclose the claimed invention, as rejected above, except for the claimed submersible heater disposed within a water reservoir. Morrison, another environmental control device, is considered to disclose a submersible heater disposed within a water reservoir at column 3 lines 5-23. It would have been obvious to one skilled in the art to combine the teachings of Stephenson with the a submersible heater disposed within a water reservoir, suggested by Morrison, for the purpose of controlling humidity levels through direct heating of water contained within the control environment structure.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson in view Stauffer in further view of Morrison. Stephenson in view Stauffer is considered to disclose the claimed invention, as rejected above, except for the claimed submersible heater disposed within a water reservoir. Morrison, another environmental control device, is considered to disclose a submersible heater disposed within a water reservoir at column 3 lines 5-23. It would have been obvious to one skilled in the art to combine the teachings of Stephenson in view Stauffer with the a submersible heater disposed within a water reservoir, suggested by Morrison, for the purpose of controlling humidity levels through direct heating of water contained within the control environment structure.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson in view of Morrison. Stephenson is considered to disclose the claimed invention, as rejected above, except for the claimed submersible heater disposed within a water reservoir. Morrison, another environmental control device, is considered to disclose a submersible heater disposed within a water reservoir at column 3 lines 5-23. It would have been obvious to one skilled in the art to combine the teachings of Stephenson with the a submersible heater disposed within a water reservoir, suggested by Morrison, for the purpose of controlling humidity levels through direct heating of water contained within the control environment structure.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson in view Stauffer in further view of Morrison. Stephenson in view Stauffer is considered to disclose the claimed invention, as rejected above, except for the claimed submersible heater disposed within a water reservoir. Morrison, another environmental control device, is considered to disclose a submersible heater disposed within a water reservoir at column 3 lines 5-23. It would have been obvious to one skilled in the art to combine the teachings of Stephenson in view Stauffer with the a submersible heater disposed within a water reservoir, suggested by Morrison, for the purpose of controlling humidity levels through direct heating of water contained within the control environment structure.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272

4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMG  
December 2, 2005

